

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA**

Yolanda Irving, et. al,	*	
	*	
Plaintiffs,	*	
	*	5:22-cv-0068-BO
v.	*	
	*	
City of Raleigh, et. al.,	*	
	*	
Defendants.	*	

**MEMORANDUM IN OPPOSITION
TO CITY’S MOTION FOR PROTECTIVE ORDER**

Plaintiff Emancipate NC respectfully responds in opposition to the City of Raleigh’s Memorandum in Support of a Motion for a Protective Order. (DE 152, 153.)

RELEVANT HISTORY

1. The individual plaintiffs filed this lawsuit for damages and injunction on February 22, 2022, including two claims for *Monell* liability against the City of Raleigh, related to an unconstitutional “No Knock” warrant entry on two private homes of innocent women and children. (DE 2).
2. On February 22, 2022, Chief of Police Estella Patterson stated in a media interview to WRAL that Raleigh Police does not conduct “No Knock” warrants.¹ At the time, Defendant Patterson did not cite any written policy.

¹ Maggie Brown, “Lawsuit accuses Raleigh police of illegally raiding two families' homes using no-knock warrant,” WRAL, (Feb. 22, 2022), *available at*, <https://www.wral.com/lawsuit-accuses-raleigh-police-of-illegally-raiding-two-families-homes-using-no-knock-warrant/20153669/>

3. On May 16, 2022, Emancipate NC joined the lawsuit as an organizational plaintiff, adding its claims for injunctive and declaratory relief against official capacity defendants to end the unconstitutional “No Knock” and “Quick Knock” warrant executions by the Raleigh Police Department because they violate the Fourth Amendment. These claims are found in “Claim Two.” (DE 41.)
4. On May 17, 2022, the Raleigh Police Department officially banned No Knock warrants in a written policy.
5. On July 6, 2022, the Court entered a Scheduling Order. (DE 69) It stated:

The parties propose bifurcation of discovery into two phases: Phase One (Individual Defendants) and Phase II (*Monell* claims - Counts Ten, Eleven, and Twelve of the Amended Complaint).
6. On October 19, 2022, the City of Raleigh filed a Motion for Protective Order to forbid the deposition of Defendant Chief of Police Estella Patterson. (DE 132.) This motion remains pending.
7. In or around October or November 2022, the City of Raleigh altered the web-link for their official publication of Raleigh Police Department Written Directives. The old link,
<https://cityofraleigh0drupal.blob.core.usgovcloudapi.net/drupal-prod/COR23/RPDWrittenDirectives.pdf>
which was last accessed by plaintiffs on August 7, 2022, is now dead. In its place, is a new link,

<https://cityofraleigh0drupal.blob.core.usgovcloudapi.net/drupal-prod/COR23/rpd-written-directives.pdf>,

where the May 17, 2022 ban on “No Knock” warrants is public. *See* Policy # 1110-08, Searches and Seizures: Investigative Stops and Frisks, Effective: 05-17-2022.

8. On November 22, 2022, the Court denied the City’s Motion to Dismiss Emancipate NC. (DE 141.)
9. In late November 2022, the Raleigh Police spokesman Lt. Jason Borneo pointed to the existence of the Raleigh Police’s written policy banning “No Knock” warrants in an inquiry from the press and directed the public to the Written Directives online, housed at the new link.²
10. On December 1, 2022, the SEU Defendants served discovery requests upon Emancipate NC about the Claim Two injunctive and declaratory relief.
11. On December 2, 2022, Emancipate NC served discovery about the Claim Two injunctive and declaratory relief on Defendant Estella Patterson, seeking *inter alia*, information about the new “No Knock” policy, including the 30(b)(6) deposition of a corporate representative.
12. On December 22, 2022, the City of Raleigh, Estella Patterson, and Marchell Adams-David made a Motion for a Protective Order to forbid the 30(b)(6) deposition of the corporate representative of the Raleigh Police Department. (DE 152, 153.)

² Jasmine Gallup, “Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police's 'No-Knock' Warrant Debacle,” *Indy Week*, (Dec. 14, 2022), *available at*, <https://indyweek.com/news/wake/rpd-no-knock-raleigh-lawsuit/>

13. On December 27, 2022, Defendant Abdullah served discovery about the Claim Two injunctive and declaratory relief on Emancipate NC.

ARGUMENT

The City of Raleigh argues that Emancipate NC's claim to enjoin Raleigh Police from violating the Fourth Amendment by entering private homes on a "No Knock" or "Quick Knock" basis, located in Claim Two, properly belongs in Phase II of discovery.

The Scheduling Order (DE 69) states:

The parties propose bifurcation of discovery into two phases: Phase One (Individual Defendants) and Phase II (*Monell* claims - Counts Ten, Eleven, and Twelve of the Amended Complaint).

The Scheduling Order did not place Emancipate NC's Claim Two for injunctive and declaratory relief against official capacity defendants into Phase II. (DE 69.) The Scheduling Order placed "Counts Ten, Eleven, and Twelve" into Phase II.

To the extent the Court concludes that Claim Two ought to be housed with Counts Ten, Eleven, and Twelve, in the interests of equity, plaintiffs seek that *all* discovery related to Claim Two be delayed until Phase II, not solely offensive discovery. Various defendants have sought discovery from Emancipate NC on this same claim during the course of Phase I discovery.

CONCLUSION

For the foregoing reasons, Emancipate NC respectfully requests that the Motion for Protective Order be denied, or in the alternative, that any Protective Order issued include both offensive and defensive discovery on Claim Two injunctive and declaratory relief.

Respectfully submitted, this the 5th day of January, 2023,

/s/Elizabeth G. Simpson

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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